

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,

CR Action
No. 1:21-670

vs.

Washington, DC
July 22, 2022

STEPHEN K. BANNON,

9:14 a.m.

Defendant.

TRANSCRIPT OF JURY TRIAL - DAY FIVE
BEFORE THE HONORABLE CARL J. NICHOLS
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the U.S.:

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P R O C E E D I N G S

1
2 **DEPUTY CLERK:** Good morning, Your Honor. This is
3 criminal case year 2021-670, United States of America versus
4 Stephen K. Bannon.

5 Counsel, please come forward and introduce
6 yourselves for the record beginning with the government.

7 **MS. VAUGHN:** Good morning, Your Honor. Amanda
8 Vaughn and Molly Gaston for the United States. Paralegal
9 specialist Quiana Dunn-Gordon and FBI Special Agent D'Amico
10 are also at counsel table.

11 **MR. SCHOEN:** Good morning, Your Honor. David
12 Schoen, Mr. Bannon, along with Evan Corcoran. Mr. Bannon is
13 at the defense table and Attorney Riane White, also,
14 Your Honor.

15 **THE COURT:** Good morning, everyone.

16 **MR. SCHOEN:** Good morning. Thank you, Your Honor.

17 **THE COURT:** I just want the record to reflect that
18 I received some objections from Mr. Bannon to the final or
19 close-to-final jury instructions that I had circulated to
20 the parties yesterday.

21 I emailed the final, final version, to the parties
22 about half an hour ago, which made some relatively modest
23 edits to the Instruction 24, and I sent that to the parties
24 in redline, so they should have exactly the changes I've
25 made.

1 I think we have provided the parties with hard
2 copies of the instructions, as I intended to use them. And
3 then, of course, I will be reading them right now, and this
4 is the copy -- the one I am holding now that will be
5 provided to the jury.

6 **MR. CORCORAN:** Your Honor, you just mean that you
7 previously provided the hard copies. Correct?

8 **THE COURT:** Well, I have the version -- I have a
9 hard-copy version that is clean -- all right. There we
10 go --

11 **MR. CORCORAN:** Thank you, Your Honor.

12 **THE COURT:** -- of the exact version I intend to
13 give to the jury now.

14 So with that, Ms. Lesley, could you please bring
15 in the jury.

16 **MS. VAUGHN:** Your Honor, could we clarify one
17 thing?

18 **THE COURT:** Yes.

19 **MS. VAUGHN:** Or two things, I guess.

20 First, we just want to confirm that the verdict
21 form that the parties had jointly offered is going to be the
22 one that is used.

23 **THE COURT:** Yes, it is. Thank you.

24 And I believe we sent that out perhaps this
25 morning as well. But, yes, my understanding is the parties

1 jointly agreed on it and there is no objections to it, and
2 so we will use the one that the parties proposed.

3 **MS. VAUGHN:** And we also want to confirm that the
4 indictment, in the first sentence says, "the dates are on or
5 about." So we just want to confirm that that should not
6 be -- or whether we can include that when the Court says,
7 "As of the dates charged" to reflect the indictment, "As of
8 on or about the dates charged."

9 **THE COURT:** Point me to exactly the language.

10 **MS. VAUGHN:** In the instructions or the
11 indictment?

12 **THE COURT:** I'm asking you where you would like me
13 to include that language that you are identifying.

14 **MS. VAUGHN:** In Instruction 24 --

15 **THE COURT:** Yes.

16 **MS. VAUGHN:** -- where the Court has added "As of
17 the dates charged" in the second paragraph.

18 **THE COURT:** Yes.

19 **MS. VAUGHN:** Given the indictment's allegations,
20 we think it would be appropriate to say "as of on or about
21 the dates charged".

22 **THE COURT:** I agree with that given the language
23 in the indictment.

24 **MS. VAUGHN:** Thank you.

25 **MR. SCHOEN:** We object to that.

1 **THE COURT:** Objection preserved, yes. Thank you
2 for that.

3 **MR. CORCORAN:** Slightly different issue,
4 Your Honor, which is, in the proposed instructions, I don't
5 know if there's an "on or about" instruction in the current
6 version of the instructions, but that was not in play. So
7 we would like an opportunity to look at -- there's a pattern
8 jury instruction on "on or about," and we'd like a moment
9 just to look at that.

10 **THE COURT:** Okay. We can take a moment.

11 **MS. VAUGHN:** We have no objection to giving that
12 instruction.

13 (Brief pause.)

14 **MR. CORCORAN:** Your Honor, we would just ask for
15 the addition of Redbook Instruction 3.103. I think both
16 parties are agreeable to that.

17 **MS. VAUGHN:** No objection.

18 **THE COURT:** Okay. So we will include that
19 instruction.

20 I would propose to make it Instruction 24 before
21 we get to the elements. It would just be the new
22 instruction before the elements, Instruction 24. I just
23 need a copy now.

24 **MR. SCHOEN:** Your Honor, I just want to be sure
25 that the record is clear. Our objection is Count 1 uses the

1 term "on," not "on or about." We believe it's a variance
2 from the indictment if the Court charges "on or about."
3 That's the objection, Your Honor.

4 **THE COURT:** I understand.

5 **MR. SCHOEN:** Okay. Thank you.

6 **THE COURT:** So the problem, Ms. Vaughn, is the
7 indictment uses the words "on" in Count 1 and "by" in
8 Count 2.

9 **MS. VAUGHN:** Your Honor, on Page 1 of the
10 indictment, it says "all dates are on or about."

11 **THE COURT:** Okay. We're going to include then "on
12 or about," and we'll include the "on or about" instruction,
13 which is 3.103. I just need that instruction.

14 Perhaps I can pull it up.

15 (Brief pause.)

16 **MS. VAUGHN:** Your Honor, we have it. We can email
17 it to your chamber's email address now.

18 **THE COURT:** Am I right that it needs to include --
19 that it should include the alleged dates of the offense and
20 Instruction 3.103, on or about, proof of, says, The
21 indictment --

22 **MS. VAUGHN:** Yes. So it would say, The indictment
23 charges that the offense in Count 1 was committed on or
24 about October 14, 2021. The offense in Count 2 was
25 committed on or about -- or by on or about October 18th.

1 **THE COURT:** Okay. We will work on that.

2 Okay. We're ready now.

3 Ms. Lesley, please bring the jury in.

4 (Jury entered the courtroom at 9:25 a.m.)

5 **THE COURT:** Good morning, ladies and gentlemen.

6 **JURORS:** Good morning.

7 **THE COURT:** Before we begin, I just want to give
8 you a very brief summary of the order of operations for this
9 morning.

10 So I will be reading to you the jury instructions
11 that will apply to your deliberations this morning. After I
12 do that -- and I will do that orally. I'll also mention in
13 my first instruction that you will also be getting a copy of
14 the instructions when you go deliberate. So you should
15 listen, of course, but you will also get a copy of this when
16 you deliberate.

17 After that, the parties will then do their closing
18 arguments. And once their closing arguments have been done,
19 I will then excuse you to begin your deliberations with one
20 or two final instructions about that. So that's really just
21 an overview of what we're going to do this morning.

22 So as to the instructions, and these are my
23 instructions to you: Instruction 1 is the use of the
24 instructions.

25 As I said, I will provide you with a copy of my

1 instructions. During your deliberations you may, if you
2 want, refer to these instructions. While you may refer to
3 any particular portion of the instructions, you are to
4 consider the instructions as a whole and may not follow some
5 and ignore others.

6 If you have any questions about the instructions,
7 you should feel free to send me a note. Please return your
8 instructions to me when your verdict is rendered.

9 Instruction 2 concerns the role of the Court. My
10 function is and has been to conduct this trial in an
11 orderly, fair and efficient manner, to rule on questions of
12 law and to instruct you on the law that applies in this
13 case.

14 It is your duty to accept the law as I instruct
15 you. You should consider all the instructions as a whole.
16 You may not ignore or refuse to follow any of them.

17 The next instruction is the role of the jury.
18 Your function as the jury is to determine what the facts are
19 in this case. You are the sole judges of the facts. While
20 it is my responsibility to decide what is admitted as
21 evidence during the trial, you alone decide what weight, if
22 any, to give to that evidence. You alone decide the
23 credibility or believability of the witnesses.

24 As human beings, we all have personal likes and
25 dislikes, opinions, prejudices and biases. Generally we are

1 aware of these things, but you should also consider the
2 possibility that you have implicit biases, that is, biases
3 of which you may not be consciously aware. Personal
4 prejudices, preferences or biases have no place in a
5 courtroom where our goal is to arrive at a just and
6 impartial verdict.

7 All people deserve fair treatment in our system of
8 justice regardless of any personal characteristic such as
9 race, national or ethnic origin, religion, age, disability,
10 sex, gender identity or expression, sexual orientation,
11 education or income level.

12 You should determine the facts solely from a fair
13 consideration of the evidence. You should decide the case
14 without prejudice, fear, sympathy, favoritism or
15 consideration of public opinion. You may not take anything
16 I may have said or done as indicating how I think you should
17 decide this case.

18 If you believe that I have expressed or indicated
19 any such opinion, you should ignore it. The verdict in this
20 case is your sole and exclusive responsibility.

21 Instruction 4 is about recollection. If any
22 reference by me or the attorneys to the evidence is
23 different from your own memory of the evidence, it is your
24 memory that should control during your deliberations.

25 Instruction 5 concerns statements of counsel. The

1 statements and arguments of the lawyers are not evidence.
2 They are only intended to assist you in understanding the
3 evidence. Similarly, the questions of the lawyers are not
4 evidence.

5 Instruction 6 is about the indictment. It is not
6 evidence. The indictment is merely the formal way of
7 accusing a person of a crime. You must not consider the
8 indictment as evidence of any kind. You may not consider it
9 as any evidence of the defendant's guilt or draw any
10 inference of guilt from it.

11 Instruction 7 concerns the burden of proof and
12 presumption of innocence. Every defendant in a criminal
13 case is presumed to be innocent. This presumption of
14 innocence remains with the defendant throughout the trial
15 unless and until the government has proven he is guilty
16 beyond a reasonable doubt. This burden never shifts
17 throughout the trial. The law does not require the
18 defendant to prove his innocence or to produce any evidence
19 at all.

20 If you find that the government has proven beyond
21 a reasonable doubt every element of a particular offense
22 with which the defendant is charged, it is your duty to find
23 him guilty of that offense.

24 On the other hand, if you find that the government
25 has failed to prove any element of a particular offense

1 beyond a reasonable doubt, it is your duty to find the
2 defendant not guilty of that offense.

3 Instruction 8 concerns reasonable doubt. The
4 government has the burden of proving the defendant guilty
5 beyond a reasonable doubt as to each count or charge against
6 him. Some of you may have served as jurors in civil cases
7 where you were told that it is only necessary to prove that
8 a fact is more likely than not true, which we call the
9 preponderance of the evidence.

10 In criminal cases, the government's proof must be
11 more powerful than that. It must be beyond a reasonable
12 doubt. Proof beyond a reasonable doubt is proof that leaves
13 you firmly convinced of the defendant's guilt. There are
14 very few things in this world that we know with absolute
15 certainty.

16 In criminal cases, the law does not require proof
17 that overcomes every possible doubt. If, based on your
18 consideration of the evidence, you are firmly convinced that
19 the defendant is guilty of the crime charged, you must find
20 him guilty.

21 If, on the other hand, you think there is a real
22 possibility that a defendant is not guilty, you must give
23 him the benefit of the doubt and find him not guilty.

24 Instruction 9 concerns direct and circumstantial
25 evidence. There are two types of evidence from which you

1 may determine what the facts are in this case: Direct
2 evidence and circumstantial evidence.

3 When a witness, such as an eyewitness, asserts
4 actual knowledge of a fact, that witness's testimony is
5 direct evidence. On the other hand, evidence of facts and
6 circumstances from which reasonable inferences may be drawn
7 is circumstantial evidence.

8 Let me give you an example. Assume a person
9 looked out a window and saw that snow was falling. If that
10 person later testified in court about what he had seen, his
11 testimony would be direct evidence that snow was falling at
12 the time he saw it happen.

13 Assume, however, that he looked out a window and
14 saw no snow on the ground and then went to sleep and saw
15 snow on the ground after he woke up. His testimony about
16 what he had seen would be circumstantial evidence; that it
17 had snowed while he was asleep.

18 The law says that both direct and circumstantial
19 evidence are acceptable as a means of proving a fact. The
20 law does not favor one form of evidence over another. It is
21 for you to decide how much weight to give to any particular
22 evidence, whether it is direct or circumstantial. You are
23 permitted to give equal weight to both.

24 Circumstantial evidence does not require a greater
25 degree of certainty than direct evidence. In reaching a

1 verdict in this case, you should consider all of the
2 evidence presented, both direct and circumstantial.

3 Instruction 10 is nature of charges not to be
4 considered. One of the questions you were asked when we
5 were selecting this jury was whether the nature of the
6 charges itself would affect your ability to reach a fair and
7 impartial verdict. We asked you that question because you
8 must not allow the nature of a charge to affect your
9 verdict. You must consider only the evidence that has been
10 presented in this case in reaching a fair and impartial
11 verdict.

12 Instruction 11 concerns inadmissible and stricken
13 evidence. The lawyers in this case sometimes objected when
14 the other side asked a question, made an argument or offered
15 evidence that the objecting lawyer believed was not proper.
16 You must not hold such objections against the lawyer who
17 made them or the party he or she represents. It is the
18 lawyer's responsibility to object to evidence that they
19 believe is not admissible.

20 If, during the course of the trial, I sustained an
21 objection to a lawyer's question, you should ignore the
22 question and you must not speculate as to what the answer
23 would have been.

24 If after a witness answered a question, I ruled
25 that the answer should be stricken, you should ignore both

1 the question and the answer, and they should play no part in
2 your deliberations.

3 Instruction 12 concerns the credibility of
4 witnesses. In determining whether the government has proved
5 the charges against the defendant beyond a reasonable doubt,
6 you must consider the testimony of all the witnesses who
7 have testified. You are the sole judges of the credibility
8 of the witnesses.

9 You alone determine whether to believe any witness
10 and the extent to which a witness should be believed.

11 Judging a witness's credibility means evaluating whether the
12 witness has testified truthfully and also whether the
13 witness accurately observed, recalled and described the
14 matters about which the witness testified.

15 You may consider anything that mere judgment
16 affects the credibility of any witness. For example, you
17 may consider the demeanor and the behavior of the witness on
18 the witness stand, the witness's manner of testifying,
19 whether the witness impresses you as a truthful person,
20 whether the witness impresses you as having an accurate
21 memory, whether the witness has any reason for not telling
22 the truth, whether the witness had a meaningful opportunity
23 to observe the matters about which he or she testified,
24 whether the witness has any interest in the outcome of this
25 case, stands to gain anything by testifying or has

1 friendship or hostility toward other people concerned with
2 this case.

3 In evaluating the accuracy of a witness's memory,
4 you may consider the circumstances surrounding the event,
5 including the time that elapsed between the event and any
6 later recollections of the event and the circumstances under
7 which the witness was asked to recall details of the event.

8 You may consider whether there are any
9 consistencies or inconsistencies in a witness's testimony or
10 between the witness's testimony and any previous statements
11 made by the witness. You may also consider any
12 consistencies or inconsistencies between the witness's
13 testimony and any other evidence that you credit. You may
14 consider whether any inconsistencies are the result of
15 lapses in memory, mistake, misunderstanding, intentional
16 falsehood or differences in perception.

17 You may consider the reasonableness or
18 unreasonableness, the probability or improbability of the
19 testimony of a witness in determining whether to accept it
20 as true and accurate. You may consider whether the witness
21 has been contradicted or supported by other evidence that
22 you credit.

23 If you believe that any witness has shown him or
24 herself to be biased or prejudiced, for or against either
25 side in this trial, or motivated by self-interest, you may

1 consider and determine whether such bias or prejudice has
2 colored the testimony of the witness so as to affect the
3 desire and capability of that witness to tell the truth.
4 You should give the testimony of each witness such weight as
5 in your judgment it is fairly entitled to receive.

6 Instruction 13 concerns the right of a defendant
7 not to testify. Every defendant in a criminal case has an
8 absolute right not to testify. The defendant here has
9 chosen to exercise this right. You must not hold this
10 decision against him, and it would be improper for you to
11 speculate as to the reason or reasons for his decision. You
12 must not assume the defendant is guilty because he chose not
13 to testify.

14 Instruction 14 concerns motive. Motive is not an
15 element of the offenses charged and the government is not
16 required to prove motive in this case. You may, however,
17 consider evidence of motive or lack of evidence of motive in
18 deciding whether or not the government has proved the
19 charges beyond a reasonable doubt.

20 Instruction 15 concerns multiple counts. Each
21 count of the indictment charges a separate offense. You
22 should consider each offense and the evidence which applies
23 to it separately and you should return separate verdicts as
24 to each count. The fact that you may find the defendant
25 guilty or not guilty on any one count of the indictment

1 should not influence your verdict with respect to any other
2 count of the indictment.

3 Instruction 16 is about unanimity. A verdict must
4 represent the considered judgment of each juror, and in
5 order to return a verdict, each juror must agree on the
6 verdict. In other words, your verdict on each count must be
7 unanimous.

8 Instruction 17 is about the verdict form and
9 explanation. You will be provided with a verdict form for
10 use when you have concluded your deliberations. The form is
11 not evidence in this case, and nothing in it should be taken
12 to suggest or convey any opinion by me as to what the
13 verdict should be.

14 Nothing in the form replaces the instructions of
15 law I've already given you, and nothing in it replaces or
16 modifies the instructions about the elements which the
17 government must prove beyond a reasonable doubt. The form
18 is meant only to assist you in recording your verdict.

19 Instruction 18 concerns exhibits during
20 deliberations. I will be sending to the jury room with you
21 the exhibits that have been admitted into evidence. You may
22 examine any or all of them as you consider your verdicts.
23 Please keep in mind that exhibits that were only marked for
24 identification but were not admitted into evidence will not
25 be given to you to examine or consider in reaching your

1 verdict.

2 Instruction 19 is about the selection of a
3 foreperson. When you return to the jury room, you should
4 first select a foreperson to preside over your deliberations
5 and to be your spokesperson here in court. There are no
6 specific rules regarding how you should select a foreperson;
7 that is up to you.

8 However, as you go about the task, be mindful of
9 your mission, to reach a fair and just verdict based on the
10 evidence. Consider selecting a foreperson who will be able
11 to facilitate your discussions, who can help you organize
12 the evidence, who will encourage civility and mutual respect
13 among all of you, who invite each juror to speak up
14 regarding his or her views about the evidence, and who will
15 promote a full and fair consideration of that evidence.

16 Instruction 20 is another instruction to repeat in
17 some ways what I've said before about publicity,
18 communications and research. I'd like to remind you that,
19 in some cases, and this may be one again, there may be
20 reports in the newspaper or on the radio, internet or
21 television concerning this case. If there should be such
22 media coverage in this case, you may be tempted to read,
23 listen to or watch it.

24 You must not read, listen to or watch such reports
25 because, again, you must decide this case solely on the

1 evidence presented in this courtroom. If any publicity
2 about this trial inadvertently comes to your attention, do
3 not discuss it with any other jurors or anyone else. Just
4 let me or my clerk know as soon as it -- after it happens,
5 if you can, and I will briefly discuss it with you.

6 As you retire to the jury room to deliberate, I
7 also want to wish -- when you do this later, I wish to
8 remind you of an instruction I gave you at the beginning of
9 the trial. During deliberations, you may not communicate
10 with anyone not on the jury, about this case. This includes
11 electronic communications such as emails or texts or any
12 blogging about the case.

13 In addition, you may not conduct any independent
14 investigation during deliberations. This means you may not
15 conduct any research in person or electronically via the
16 internet or in any other way.

17 Instruction 21 is notetaking by jurors. During
18 the trial, as you know, I've permitted those jurors who
19 wanted to do so to take notes. You may take your notebooks
20 with you to the jury room and use them during your
21 deliberations, if you wish.

22 As I told you at the beginning of the trial, your
23 notes are only to be an aid to your memory. They are not
24 evidence in the case, and they should not replace your own
25 memory of the evidence.

1 Those jurors who have not taken notes should rely
2 on their own memory of the evidence. The notes are intended
3 to be for the notetaker's own personal use.

4 The next instruction concerns communications
5 between you, the jury and me during your deliberations. If
6 it becomes necessary during your deliberations to
7 communicate with me, you may send a note by the clerk or
8 marshal, signed by your foreperson or by one or more members
9 of the jury.

10 No member of the jury should try to communicate
11 with me except by such a signed note, and I will never
12 communicate with any member of the jury on any matter
13 concerning the merits of this case except in writing or
14 orally here in open court.

15 Bear in mind also that you are never, under any
16 circumstances, to reveal to any person, not the clerk, the
17 marshal or me, how jurors are voting until after you have
18 reached a unanimous verdict. This means that you should
19 never tell me, in writing or in open court or otherwise, how
20 the jury is divided on any matter. For example, 6/6, 7/5,
21 or 11/1 or in any other fashion whether the vote is for
22 conviction or acquittal or on any other in the case.

23 Instruction 23 concerns proof of state of mind.
24 Someone's state of mind ordinarily cannot be proved directly
25 because there is no way of knowing what a person is actually

1 thinking, but you may infer someone's state of mind from
2 their surrounding circumstances. You may consider any
3 statement made or acts done or omitted by the defendant and
4 all other facts and circumstances received in evidence,
5 which indicate the state of mind.

6 It is entirely up to you, however, to decide what
7 facts to find from the evidence received during this trial.
8 You should consider all of the circumstances in evidence
9 that you think are relevant in determining whether the
10 government has proved beyond a reasonable doubt that the
11 defendant acted with the necessary state of mind.

12 Instruction 24 concerns the use of the phrase "on
13 or about". The indictment charges that the offense of Count
14 1 was committed on or about October 14th, 2021; and the
15 offense of Count 2 was committed by or on or about
16 October 18th, 2021.

17 The proof need not establish with certainty the
18 exact date of the alleged offense. It is sufficient if the
19 evidence in the case establishes beyond a reasonable doubt
20 if the offense was committed on a date reasonably near the
21 date alleged.

22 Instruction 25, this is about the elements of the
23 offense of contempt of Congress charged here. Counts 1 and
24 2 of the indictment charge the defendant with contempt of
25 Congress for willfully not providing testimony and

1 information to the U.S. House Select Committee to
2 investigate the January 6th attack on the United States
3 Capitol.

4 Count 1 charges the defendant with the willful
5 failure to provide testimony on October 14th, 2021. Count 2
6 charges the defendant with the willful failure to produce
7 records by October 18, 2021.

8 As I've already mentioned, the burden of proof in
9 the case lies on the government alone. It must prove each
10 element beyond a reasonable doubt. Thus, to find the
11 defendant guilty of contempt of Congress, you must find that
12 as of on or about the dates charged, the government has
13 proved each of the following elements beyond a reasonable
14 doubt:

15 First, that the defendant was subpoenaed by the
16 Select Committee to provide testimony or produce papers.
17 Second, that the subpoena sought testimony or information
18 pertinent to the investigation that the Select Committee was
19 authorized to conduct.

20 Third, that the defendant failed to comply or
21 refused to comply with the subpoena. And, fourth, that the
22 defendant's failure or refusal to comply was willful. Some
23 clarifications about the elements are necessary.

24 For the second element, the testimony or
25 information sought by the subpoena must be pertinent. In

1 order for you to find that the information was pertinent,
2 the government must prove to you beyond a reasonable doubt
3 that at the time the Select Committee issued the subpoena,
4 the testimony or information sought could have related to
5 the Select Committee's investigation in some way.

6 Phrased differently, the government must prove to
7 you beyond a reasonable doubt that there was, at the time
8 the subpoena was issued, some connective reasoning between
9 the topic under inquiry and the information sought. It does
10 not matter whether the information the defendant allegedly
11 had would have been pertinent to the authorized
12 investigation. All that matters is that it could have been
13 pertinent at the time that the Select Committee sought the
14 information.

15 For the fourth element, the government must prove
16 to you beyond a reasonable doubt that the defendant acted
17 willfully. The term willful in this context does not mean
18 that the defendant's failure or refusal to comply with the
19 Select Committee's subpoena was for an evil or bad purpose.

20 The reason or purpose of the failure or refusal to
21 comply is immaterial so long as the failure or refusal was
22 deliberate and intentional. To be deliberate or intentional
23 means that the failure to comply was not the result of
24 inadvertence, accident or mistake, including a mistake
25 regarding the operative dates or date.

1 It is not a defense to contempt of Congress that
2 the defendant did not comply with the subpoena because of
3 the legal advice he received from his attorney or someone
4 else, because of his understanding or belief of what the law
5 required or allowed or because of his understanding or
6 belief that he had a legal privilege, such as executive
7 privilege, that excused him from complying.

8 Finally, if you find beyond a reasonable doubt
9 that the defendant deliberately and intentionally failed or
10 refused to comply with a subpoena at the time alleged by the
11 government, it is not a defense to contempt of Congress that
12 that defendant later offered to comply or that the Committee
13 later agreed to accept documents or testimony from him.

14 Finally, Instruction 26 is to consider only the
15 crime charged. You are here to determine whether the
16 government has proved beyond a reasonable doubt that the
17 defendant is guilty of the crimes charged. The defendant is
18 not on trial for any act, conduct or crime that is not
19 charged in the indictment.

20 As I said, I will have a few short instructions
21 after closing arguments. But it is now time for closing
22 arguments.

23 So, Ms. Vaughn or Ms. Gaston.

24 **MS. GASTON:** Good morning.

25 **JURORS:** Good morning.

1 **MS. GASTON:** This case is not complicated but it
2 is important.

3 As Ms. Vaughn told you on Tuesday, this is a
4 simple case about a man, that man, Steve Bannon, who didn't
5 show up.

6 Why didn't he show up? He didn't show up because
7 he did not want to provide the January 6 Committee with
8 documents. He did not want to answer its questions. And
9 when it really comes down to it, he did not want to
10 recognize Congress' authority or play by the government's
11 rules.

12 So why is this case important? It is important
13 because our government only works if people show up. It
14 only works if people play by the rules. And it only works
15 if people are held accountable when they do not. And in
16 this particular case, when the defendant deliberately chose
17 to defy a congressional subpoena, that was a crime. Let's
18 talk about that crime.

19 First, let's talk about the Committee. You saw it
20 laid out in House Resolution 503, which created the
21 Committee.

22 January 6th, 2021 was a dark day in our nation's
23 history. A mob attacked the United States Capitol, the seat
24 of our federal government. Rioters did violence to law
25 enforcement officers attempting to protect members of

1 Congress, to the historic building in which our lawmakers
2 meet and pass legislation and to one of the most prized and
3 unbroken features of democracy in the United States, the
4 peaceful transfer of power. The handing over of the
5 government from one President to the next.

6 In the wake of that devastating event, Congress
7 sought to make sense of it, learn from it and make sure that
8 it never happens again through legislation and funding. And
9 for those purposes, it created the Select Committee to
10 investigate the January 6th attack on the United States
11 Capitol.

12 And the Committee got to work. It did research.
13 It made voluntary requests for information and interviews.
14 And in some circumstances, it issued subpoenas, as is its
15 right under the authority of the Constitution, to require
16 witnesses to produce documents and give sworn answers to the
17 Committee's questions; and that's where the defendant comes
18 in.

19 As you know, years ago, the defendant had worked
20 for Donald Trump in the White House, and the Committee had
21 reason to believe that the defendant was still connected to
22 President Trump at the time of January 6th, 2021.

23 Furthermore, the Committee had reason to believe
24 that the defendant might have information about the events
25 leading up to and on January 6th. And as you recall from

1 this cover letter to the subpoena, the Committee sought
2 information about, among other topics, efforts the defendant
3 was said to have engaged in to block the certification of
4 the election. To block the peaceful transfer of power.

5 Here, the Committee asks about the defendant's
6 potential presence at meetings at the Willard Hotel on
7 January 5th, 2021, during an effort to persuade members of
8 Congress to block the certification. And it also asked
9 about a public statement he made on January 5th, the day
10 before January 6th, in which he said, "All hell is going to
11 break loose tomorrow."

12 And on September 23rd, 2021, the Committee sent
13 the defendant a subpoena. This document is not hard to
14 understand. It tells the defendant what he is required to
15 do and when he is required to do it. One, produce documents
16 to the Committee on October 7th at 10 a.m. Two, appear for
17 a deposition at the Committee's offices on October 14th at
18 10 a.m.

19 But the defendant did not want to comply and
20 produce documents, so he didn't. Between when the defendant
21 accepted the subpoena on September 24th and the document
22 deadline on October 7th at 10 a.m., the defendant and his
23 attorney had no contact with the Committee. The deadline
24 came and went. The defendant did not produce a single
25 document.

1 Was that a mistake? No. That was intentional.
2 That night on October 7th, through his attorney, the
3 defendant sent a letter to the Committee claiming that a
4 privilege completely exempted him from complying with the
5 subpoena.

6 As you heard from Agent Hart, up to that point,
7 the defendant had not even bothered to collect documents
8 responsive to the subpoena. That was so even though the
9 privilege he was claiming could not possibly cover
10 everything he had.

11 And the next day the defendant made his feelings
12 about the Committee and its subpoena clear when he posted on
13 Gettr that he was defying the Committee to, "stand with
14 Trump."

15 This is the defendant celebrating his defiance,
16 issuing a public statement to reporters, and this shows you
17 that the defendant knew that the subpoena had required him
18 to produce documents; and that he knew he had refused. This
19 is not a mistake.

20 The Committee wrote back on October 8th, the next
21 day. And it was clear, his claimed privilege was rejected.
22 First, it reminded him about the document deadline he had
23 missed. It wrote: "Regardless of any purported privilege
24 assertion by Mr. Trump, Mr. Bannon has an ongoing obligation
25 to produce documents to the Select Committee."

1 Next, it reminded him that the subpoena required
2 him to attend the upcoming deposition. The Committee wrote:
3 "Finally, the Select Committee expects Mr. Bannon's
4 appearance at the time and place designated in the subpoena
5 for a deposition and respond fully to questions by the
6 Select Committee."

7 And finally, the Committee advised the defendant
8 of the consequences if he continued to defy the subpoena.
9 It told him, "His willful noncompliance with the subpoena
10 would force the Select Committee to consider invoking the
11 contempt of Congress procedures in 2 United States Code
12 Sections 192, 194, which could result in a referral from the
13 House to the Department of Justice for criminal charges."

14 And you know that the defendant knew about this,
15 he was on notice about this, because as his lawyer told
16 Agent Hart, the defendant was receiving the communications
17 from the Committee, and he was fully engaged throughout the
18 entire process.

19 On October 13th, the night before the defendant
20 was required to appear for a deposition, his attorney wrote
21 back to the Committee. He again refused to comply with the
22 subpoena or the Committee's rules, declaring that he would
23 not produce documents or testify until the Committee went to
24 court or coordinated with former President Trump.

25 Let's talk about that for a minute. The defendant

1 was not in a position to issue an ultimatum to the
2 Committee. He was under a legal order to comply with the
3 Committee's rules.

4 Imagine if someone gets a parking ticket here in
5 the District. He gets to his car and there's a pink piece
6 of paper tucked under the windshield wiper. He takes the
7 ticket, he reviews the reason he got it. Well, at that
8 point he has a decision to make. He can go ahead and
9 comply; that is, pay it. Or if he thinks he has an excuse,
10 he can give an explanation to the Office of Parking
11 Enforcement.

12 But if the D.C. government rejects his excuse,
13 that is it. That is the end. If he doesn't -- he has to
14 pay. If he doesn't, the fine doubles, his car gets booted
15 or towed. What he doesn't get to do is just ignore the
16 order to pay it. He does not get to reject the authority of
17 the D.C. government to order him to do something.

18 But on the day of the deposition, October 14th,
19 that is exactly what the defendant did. He ignored
20 Congress' lawful order that he appear to answer questions.
21 The defendant refused to show up.

22 One quick aside. In his opening statement,
23 Mr. Corcoran said that you would not hear evidence that the
24 defendant ignored the subpoena. And I guess that that is
25 technically true in the sense that he responded to the

1 subpoena with letters saying that he would ignore its
2 requirements. But when it comes down to it, he ignored what
3 he was being told to do.

4 Back to October 14th. At that point, the
5 defendant had defaulted -- and that is a fancy word for
6 "refused to comply" -- twice. He had defaulted on
7 October 7th by ignoring the subpoena's demand for documents
8 and he had defaulted on October 14th by skipping the
9 deposition as the subpoena required, and on October 15th,
10 the Committee told him so.

11 The Committee reminded him that the subpoena had
12 demanded that the defendant produce documents by
13 October 7th, 2021 and appear on October 14th, 2021 for a
14 deposition. And the Committee told the defendant that he
15 had already broken the law. It wrote, "Mr. Bannon has now
16 willfully failed to both produce a single document and to
17 appear for his scheduled deposition. The Select Committee
18 believes that this willful refusal to comply with the
19 subpoena constitutes a violation of federal law."

20 And the Committee told him that it was going to
21 consider referring him for contempt of Congress, that crime;
22 and that if he wanted to clarify anything before the
23 Committee did so, he needed to do so before October 18th at
24 6 p.m.

25 But you know what happened. October 18th at

1 6 p.m. came and went, and all the defendant did was send a
2 letter, again referencing the same privilege, trying to
3 stall.

4 And let me just say here, in this opening,
5 Mr. Corcoran promised you that you would see evidence of
6 negotiation of the defendant's lawyer, Mr. Costello, going
7 back and forth with Ms. Amerling and the Committee. You saw
8 no such thing.

9 You saw for yourself the defendant's attorney's
10 letters to the Committee. This is the sum total of them.
11 On October 7th, the defendant wrote to the Committee, "We
12 are unable to respond to your request for documents and
13 testimony" and "Mr. Bannon is legally unable to comply with
14 your subpoena requests for documents and testimony."

15 On October 13th he wrote, "Mr. Bannon will not be
16 producing documents or testifying." And on October 18th he
17 wrote and asked for a one-week adjournment because of an
18 unrelated civil lawsuit.

19 So, in essence, what the defendant told the
20 Committee was, on October 7th, We won't comply. On October
21 13th, We won't comply. On October 18th, Can we have more
22 time to tell you that we still won't comply? That is not
23 negotiation.

24 What the defendant did instead, defy a subpoena
25 and refuse to comply with the rules that Congress has

1 created for responding to it, that is a crime. That is
2 contempt of Congress; and that's what the defendant is
3 charged with, two counts of contempt of Congress, one for
4 the documents and one for the testimony.

5 Let's go over the elements of contempt of
6 Congress. You heard them from Judge Nichols just a few
7 minutes ago, and you'll need to find each of these in order
8 to conclude that the defendant is guilty. And as we'll
9 discuss, the evidence here supports each and every one of
10 them beyond a reasonable doubt.

11 The elements are, first, that the defendant was
12 subpoenaed by the Select Committee to provide testimony or
13 produce papers.

14 Second, the subpoena sought testimony or
15 information pertinent to the investigation that the Select
16 Committee was authorized to conduct.

17 Third, that the defendant failed to comply or
18 refused to comply with the subpoena.

19 And fourth, that the defendant's failure or
20 refusal to comply was willful.

21 We can check off numbers one and three easily.
22 For number one, you know that the defendant was subpoenaed
23 by the Committee to provide both testimony and documents.
24 You have seen the subpoena. You have heard testimony and
25 seen evidence about the defendant's attorney accepting

1 service of it on his behalf, and you have heard that his
2 attorney provided the subpoena to him. Check.

3 And for number three, you know that the defendant
4 failed to comply. That is, he provided neither testimony
5 nor documents. You know by now that the defendant had
6 defaulted by 10 a.m. on October 7th as to the documents, and
7 by 10 a.m. on October 14th as to the testimony. And
8 everything else, everything after those dates, that is just
9 more evidence of the defendant's default.

10 So you know, as to Count 1, testimony, the
11 defendant defaulted. And you know, as to Count 2, the
12 documents, the defendant defaulted. Check.

13 So for number two, the second element, let's break
14 it down in plain English. All that means is, was the
15 subpoena asking for information related to the subject
16 matter that the Committee was supposed to be looking at and
17 how do you know that here?

18 Well, the subject matter the Committee was
19 supposed to be looking at is spelled out in its name, the
20 Select Committee to investigate the January 6th attack on
21 the United States Capitol.

22 And then there is House Resolution 503, the
23 legislation through which the Committee was created. You
24 saw that and know that the Committee was created to look
25 broadly at the events leading up to and occurring on

1 January 6th. And you know from Ms. Amerling's testimony,
2 from the letters that the Committee sent to the defendant,
3 and from the subpoena itself, those 17 items, that the
4 Committee believed that the defendant had information
5 pertinent to or related to that mission.

6 And as Judge Nichols also described to you, all
7 that matters here is that the information could have been
8 pertinent at the time that the Select Committee sought it;
9 that's the second element. Check.

10 And that brings us to the fourth and final
11 element, willfulness. Judge Nichols just instructed you and
12 told you that it means that the defendant's noncompliance
13 with the subpoena was deliberate and intentional, in other
14 words, on purpose.

15 It means that he knew he was commanded to appear
16 and he chose not to, for whatever reason. It just means
17 that the defendant's noncompliance was not the result of an
18 accident or a mistake, like if he got the date wrong or the
19 time wrong or the location wrong.

20 A person acts willfully when he makes a choice to
21 do or not do something. And as Judge Nichols told you, the
22 reason for that choice does not matter. Here, it does not
23 matter if the defendant refused to comply because his lawyer
24 advised him so or if he believed that former President Trump
25 had asserted executive privilege.

1 Let me repeat that. As long as the defendant knew
2 that he had been commanded by the Committee's subpoena to
3 produce documents and give testimony and chose not to, his
4 belief that he had a good excuse not to comply does not
5 matter; that is not a defense to contempt.

6 And let me just say, it may seem strict that the
7 defendant had to comply with the subpoena no matter what and
8 assert any privileges in the way Congress has set forth. It
9 is strict for a reason. Because, in order for the
10 government to function, citizens need to follow its rules
11 and, yes, recognize the government's authority. It may not
12 always be fun. Think back to the example of the parking
13 ticket. But it is how we all live together in society.

14 If people could just ignore parking tickets
15 without consequences, we wouldn't be able to get anywhere
16 because of illegally-parked cars in the way. If people,
17 like the defendant, can choose to ignore the government's
18 subpoenas, the important work of government to serve its
19 people cannot get done. The Committee would be stalled in
20 its efforts to use legislation and funding to stop something
21 like January 6th from ever happening again.

22 As you know from all of the evidence in this case,
23 the defendant chose to refuse to produce documents and to
24 skip the deposition. This was no mistake. He did not go to
25 the wrong room in the House Office Building or send the

1 documents to the wrong email address. Instead, the
2 defendant made a deliberate decision not to comply, and
3 that, ladies and gentlemen, is contempt. That is a crime.

4 You know that the defendant acted willfully
5 because he told the Committee so repeatedly in letters. In
6 all of his letters in front of you, you see the reason he
7 chose not to produce a single document or appear for
8 testimony, a privilege that he claimed the former President
9 gave him. There is no accident there.

10 And the defendant chose to persist in that alleged
11 privilege, even after being told by the Committee that it
12 did not apply and after being warned that he could be
13 charged with a crime. The defendant chose allegiance to
14 Donald Trump over compliance with the law.

15 He never changed course; not when the Committee
16 rejected his claimed privilege on October 8th; not when the
17 Committee warned him about contempt; not when the Committee
18 followed through and voted him in contempt; and not when the
19 full House referred him for prosecution.

20 If the defendant's default were because of a
21 mistake or accident, if we were talking about confusion
22 about a deadline, don't you think he would have spoken up
23 the moment he realized it? That he would have informed the
24 Committee that he would have rushed in to clear things up
25 and comply?

1 Look at letter after letter that the Committee
2 sent advising the defendant that, because he had missed the
3 dates, he might and ultimately would be referred for
4 prosecution. You don't ignore those by mistake. This was
5 no accident.

6 And let's talk for one last minute about what else
7 is not a mistake or an accident. It is not a mistake or
8 accident to default on a subpoena because you don't take it
9 seriously or consider the subpoena's demands to be optional.
10 It is not a mistake or an accident to default on a subpoena
11 because you failed to anticipate that the Congress would
12 reject your stalling tactics.

13 So if the defense is trying to tell you that the
14 defendant thought that the dates on the subpoena,
15 October 7th and October 14th, the ones in black and white on
16 the face of that document, were not hard deadlines, please,
17 don't fall for that.

18 And if the defense is trying to blame the Congress
19 for refusing to negotiate with the defendant, whose idea of
20 negotiation is that the defendant gets to refuse and
21 Congress has to accept it, you can give that exactly as much
22 consideration as it is worth. None.

23 We are here because the defendant had contempt for
24 Congress. This is a situation in which the name of the
25 crime tells you everything you need to know. Contempt. The

1 dictionary tells us that contempt is the feeling that a
2 person or thing is beneath consideration, worthless or
3 deserving scorn.

4 The defendant here disdained Congress. He thought
5 it was beneath him and, as a result, he chose to defy the
6 Committee. He did not show up.

7 Lastly, in his opening and through his questioning
8 of witnesses, Mr. Corcoran has tried to tell you that this
9 case is about politics. But the only person who is making
10 this case about politics is the defendant, and he is doing
11 it to distract and confuse you. Don't let him.

12 There is nothing political about finding out why
13 January 6th happened and how to make sure that it never
14 happens again. And there is nothing political about
15 enforcing the law against someone who, like the defendant,
16 flouts it.

17 You may feel that you have been asked to spend
18 your time during jury selection and these proceedings on
19 something that is small, a technical violation, something
20 that is not important. That could not be further from the
21 truth.

22 Your decision to fulfill your civic jury duty, to
23 come to this courthouse and listen attentively to the
24 evidence and the Court's instructions and momentarily to
25 engage in thoughtful deliberations, that is an act of

1 service to your country, and it is foundational to the rule
2 of law.

3 In his opening, Mr. Corcoran said that we're all
4 in this together in our country. He is right. We are all
5 participants in shared democracy. But the defendant does
6 not agree. He has contempt for our system of government,
7 and he does not think he has to play by its rules.

8 He had contempt for the Committee's need for
9 information about January 6th. And when faced with a clear
10 decision whether to comply with the congressional subpoena
11 seeking information about January 6th and to ensure that
12 nothing like it happens again, the defendant chose defiance.
13 Find him guilty.

14 **THE COURT:** Is the defense ready?

15 **MR. CORCORAN:** Yes, Your Honor.

16 **THE COURT:** Please.

17 **MR. CORCORAN:** Thank you, Your Honor.

18 Good morning.

19 **JURORS:** Good morning.

20 **MR. CORCORAN:** None of us will soon forget January
21 6, 2021. It's part of our collective memory. But there's
22 no evidence in this case that Steve Bannon was involved at
23 all. For purposes of this case, we have to put out of our
24 thoughts January 6th, because it's a case about a subpoena
25 and whether a man committed a crime in his actions with

1 regard to that subpoena.

2 Steve Bannon is innocent of the crimes with which
3 he is charged. I told you that at the very beginning and
4 now you've seen the evidence. And I'm going to explain why
5 the evidence shows that he is innocent.

6 Ms. Gaston spoke a little bit about the beginning
7 of the case and a letter that accompanied the subpoena and
8 the interest to speak to Mr. Bannon. You heard the witness
9 who testified, Ms. Amerling, and she spoke about the
10 newspaper article she read and the book that she read and
11 the idea that, on his show, he said the day before
12 January 6th that he predicted that all hell would break
13 loose. What she also said, of course, is that every major
14 media outlet in the country, every show on January 5th
15 predicted the same thing.

16 A subpoena, nonetheless, was prepared eight months
17 later. I think it's important, at the very outset, for all
18 of us to understand that, even if you think in hindsight
19 that the path that Mr. Bannon took and the path that his
20 lawyer took, Mr. Costello, turned out to be a mistake, it
21 was not a crime. It was not a crime.

22 You'll see on Page 27 of the instructions when you
23 get to them, there is a key sentence. And it says, "If you
24 made a mistake, it's not a crime." Essentially that's the
25 case.

1 I know you're going to find that the government
2 has not proved its case, and it has to prove its case beyond
3 a reasonable doubt. What is a reasonable doubt? It's a
4 doubt based on a reason. If there is a reasonable doubt,
5 you must find Steve Bannon not guilty.

6 What are some examples of things -- of evidence in
7 the case that will give you pause for which you'll have a
8 reason to doubt that the government has proved its case?

9 Well, one of the things is this: Ms. Amerling
10 testified that these are the rules that govern -- the
11 regulations that govern the use of deposition authority in
12 the 117th Congress, which is this Congress.

13 And, of course, there's a lot of legalese in this
14 document, but important to our consideration is this,
15 Paragraph 11, which says, "A witness shall not be required
16 to testify unless the witness has been provided with a copy
17 of Section 3(b)" --

18 **MS. GASTON:** Objection, Your Honor.

19 **THE COURT:** Overruled.

20 **MR. CORCORAN:** -- "of H.Res. 8, 117th Congress,
21 and these regulations."

22 What did Ms. Amerling say? She said to her
23 knowledge, Steve Bannon was not provided with Section 3(b).

24 **MS. GASTON:** Objection, Your Honor.

25 **THE COURT:** Mr. Corcoran, I'd like to tie this to

1 an issue that's actually in dispute.

2 **MR. CORCORAN:** Yes, Your Honor.

3 That is a reason for you to doubt the prosecutor's
4 case. You must find Steve Bannon -- you must give Steve
5 Bannon --

6 **MS. GASTON:** Objection.

7 **MR. CORCORAN:** -- the benefit of the doubt.

8 **THE COURT:** Sustained.

9 **MR. CORCORAN:** You must give Steve Bannon -- I'm
10 sorry, Your Honor.

11 **MS. GASTON:** Your Honor, we request a sidebar
12 please.

13 **THE COURT:** Yes.

14 (Sidebar discussion.)

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

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(Sidebar discussion concluded.)

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[REDACTED]

MR. CORCORAN: Let me talk about another issue on which I believe you can doubt the government's case. Ms. Amerling, who you spoke with, testified that a subpoena is not valid unless it was signed by the Chairman of the Committee. This should raise a doubt about the prosecution's case. Let me show you.

(Brief pause.)

This is Government's Exhibit 5, which is a letter purportedly from Chairman Thompson to Bob Costello. If you look at the last page of that letter, that is Chairman Thompson's signature.

This is Government's Exhibit No. 7, a letter from Chairman Thompson to Bob Costello, Mr. Bannon's lawyer.

(Brief pause.)

1 That is the last page of the letter with
2 Chairman Thompson's signature.

3 (Brief pause.)

4 This is a one-page letter, Government's Exhibit
5 No. 9, and that is Chairman Thompson's signature.

6 (Brief pause.)

7 This is a subpoena in the case, the one that
8 Ms. Amerling testified had to be signed by the Chairman,
9 Mr. Thompson; that is the signature on the subpoena.

10 And you can ask yourself if one of those things is
11 different than the other. Because that could be a doubt, a
12 doubt as to the government's case. A reasonable doubt as to
13 whether Chairman Thompson signed the subpoena.

14 And if you wonder whether the signature is
15 legit --

16 **MS. GASTON:** Objection, Your Honor.

17 **THE COURT:** Sidebar again.

18 (Sidebar discussion.)

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

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(Sidebar discussion concluded.)

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MR. CORCORAN: Thank you, very much, Your Honor.

7

Now, when you're considering whether the government has proved its case beyond a reasonable doubt, one of the key things that you'll have to think about is the testimony of the witnesses that you heard and their credibility.

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You heard the instructions and you'll have them with you back when you deliberate, and the instructions say that in determining whether the government has proved the charges against the defendant beyond a reasonable doubt, you must consider the testimony of all the witnesses who have testified.

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You're the sole judges of the credibility of witnesses. You alone determine whether to believe any witness and the extent to which a witness should be believed.

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One of the key things to get and to consider -- and, again, I'm just referencing what has been instructed to you and what you'll have back in the jury box -- but for this case, you need to consider whether a witness has an

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1 interest in the outcome of the case. And you need to
2 consider whether a witness has a friendship or hostility
3 towards anybody connected with the case; that's something
4 that you need to consider when you're thinking about that
5 testimony.

6 Does Ms. Amerling -- does Ms. Amerling have an
7 interest in the outcome of the case? Of course she does.
8 She has been doing Committee work for democratic members of
9 Congress for 20 years. Does she seem like somebody who is
10 used to getting their way? We've all encountered people in
11 positions of power who demand that you do things their way.
12 We've all encountered that.

13 She testified that the Select Committee had
14 interviewed more than 1,000 witnesses. So there's a
15 question, Why? Why was Steve Bannon singled out?

16 In her 20 years, Ms. Amerling had never been a
17 witness in a criminal contempt of Congress case. Twenty
18 years. This is the only time, when she testified yesterday
19 and the day before, in 20 years that she had ever been the
20 witness in a criminal contempt of Congress case.

21 Are we to believe that no subpoena recipient in
22 20 years has raised a legal objection? Are we to believe
23 that no lawyers involved in the scheduling or the scope of a
24 deposition have ever come to loggerheads so they couldn't
25 resolve it? She testified that she's been involved with

1 every single subpoena issued by a Select Committee, dozens
2 and dozens of them.

3 The letters back and forth in this case between
4 the Committee and Bob Costello, a handful of letters that
5 you'll have back in the jury room. The government wants you
6 to believe that that's a paper trail to a crime. Look at
7 those letters. That's not a paper trail to a crime. It's
8 two lawyers communicating and trying to negotiate over a
9 legal issue.

10 The key is that the negotiations over the dates of
11 the subpoena, October 7th and October 14th, those dates were
12 placeholders. Placeholders.

13 Politics. I asked you at the start of the case,
14 just as you listen to the evidence, as you look at the
15 documents, ask yourself, Is it in any way affected by
16 politics; and that's your decision. Because there's a
17 question, Why did Ms. Amerling rush to judgment on Steve
18 Bannon? Why?

19 We know there was no need for a rush. She said
20 again and again, there was an urgency. But what do we know?
21 That was back in October of 2021. The Committee is still
22 doing its work and will continue its work until the end of
23 this year. More than a year and several months were
24 available to work through the privilege objection that was
25 raised so that he could testify.

1 How do we know she rushed to judgment? Well, she
2 told you -- she told you herself that she filled out the
3 proof of service of the subpoena. It's Government's Exhibit
4 Page 2, and the second page. She told you that she filled
5 it out.

6 And if you look, if you look at the date -- first
7 look at the top where it says Proof of Service and then
8 that's her signature, as she testified, and the date. So
9 she filled out the proof of service before it was served.
10 And I asked her that, I said, And the proof of service is
11 the page that is intended to prove when service of the
12 subpoena is accomplished. Correct?

13 Answer: That's correct.

14 Question. Okay. You filled out this proof of
15 service before service was accepted. Correct?

16 That's correct.

17 Why fill out the proof of service before it's even
18 accomplished? That's a reason, that's a reason for you to
19 doubt the government's case. And you must give Steve Bannon
20 the benefit of the doubt and find him not guilty.

21 You might ask yourself, Why? Why did Ms. Amerling
22 want to make an example of Steve Bannon? Well, what does
23 the evidence show? He was a top advisor to President Trump.
24 He has a show, podcast on political topics that has a very
25 large following. And it's an election year.

1 What do we know? You're going to judge the
2 credibility of the witnesses.

3 What do we know about Ms. Amerling's testimony
4 based upon her being on the stand here in court? Her
5 demeanor on the stand captures the essence of this case.
6 Did she listen with an open mind or did she just want things
7 to go her way?

8 Her testimony in court precisely mirrored the
9 interactions that she had with Bob Costello, Mr. Bannon's
10 lawyer. The way that she conducted herself in the
11 courtroom, in a nutshell, were exactly the way, exactly the
12 way, she conducted herself in dealing with Mr. Bannon's
13 lawyer, Bob Costello. Exactly. That explains why we're
14 here today. She didn't listen to Steve Bannon's reasonable
15 request. Can you try to reach an agreement with President
16 Trump, and I'll testify before the Committee like I've done
17 before other congressional committees?

18 Can you bring the privilege issue in a civil case
19 to a judge and get it resolved? I will abide by the Judge's
20 rules.

21 Can we take a week to consider new -- a new thing
22 that just happened, the filing of a lawsuit on executive
23 privilege? Can we just have a week?

24 This case is not, as the prosecutor said, about
25 the need for people to play by the rules. This is about

1 Ms. Amerling saying, People need to play by her rules.

2 And the real question I think -- or one question
3 anyway is, did Chairman Thompson even get to consider these
4 questions, the reasonable ideas that were put forth so that
5 Mr. Bannon could testify?

6 When I asked Ms. Amerling about it, I said, "Did
7 Chairman Thompson communicate with President Trump or his
8 representatives to try to explore getting rid of executive
9 privilege so Mr. Bannon could testify?"

10 There was an objection. There was a ruling.

11 "The witness: Okay. Thank you, Your Honor."

12 The answer is, No. He didn't even consider that
13 option.

14 What other parts of Ms. Amerling's testimony
15 raised questions? Well, you may remember I talked to her
16 about the subpoena and the 17 boilerplate topics. And I
17 said, Look, is that boilerplate included with the subpoenas
18 that go out to all the other recipients? And she said --
19 she responded like it was a national secret. She said, "I
20 can't give you a roadmap to that."

21 If a witness is evasive, you've got to use that in
22 assessing her credibility, and you've got to question her
23 testimony. And it took cross-examination for her to admit
24 that she had no personal knowledge at all. No direct
25 personal knowledge at all that Steve Bannon had even one

1 single document that was responsive to this case, and yet
2 she wants him charged with a crime.

3 I asked again and again about the subpoena and the
4 different letters back and forth. Who wrote this? What
5 human being picked the dates of October 7th and 14th? Why?
6 Why those dates? It is a straightforward question which she
7 didn't want to answer.

8 On cross-examination I asked her the most basic
9 question about the October 14th date for testimony. The
10 government says it's a firm date and that's why Mr. Bannon
11 committed a crime. I asked her the most basic question:
12 "Do you have direct knowledge sitting here today who
13 selected October 14th, 2021 as the date for Mr. Bannon to
14 testify? Who?" What was her answer?

15 "To the best of my recollection, because of the
16 multiple roles that we understood Mr. Bannon potentially had
17 with respect to the events of January 6th, at the time that
18 we put the subpoena together, there was a general interest
19 in obtaining information from him expeditiously because we
20 believed that this information could potentially lead us to
21 other relevant witnesses or other relevant documents or
22 perhaps inform the Committee about avenues that it shouldn't
23 go down. So to the best of my recollection there was a
24 general interest in including deadlines that required
25 expeditious response."

1 I just asked who. The entire foundation for the
2 government's case rests on Ms. Amerling. We have been here
3 for a week and there were two witnesses. If her testimony
4 gives you a reason to doubt whether the government has
5 proved its case, you have to give Steve Bannon the benefit
6 of the doubt.

7 Now, another thing about Ms. Amerling is her
8 relationship with the prosecutor. It raises questions. She
9 has a relationship -- Ms. Amerling has a relationship with
10 one of the prosecutors in the case, Ms. Gaston. It goes
11 back 15 years.

12 Ms. Amerling's been, throughout her career, a
13 staff member aligned with one political party. She's served
14 democratic members of Congress her entire career, and she's
15 contributed her own money to democratic causes. You heard
16 that Ms. Gaston, the prosecutor, and Ms. Amerling have known
17 each other for 15 years. You've heard that they worked
18 together under a democratic member of Congress.

19 You heard that their relationship goes beyond
20 that, that they socialized outside of work, that they were
21 members in a book club, and the book club consisted of
22 people who all worked, at one time or another, for a
23 democratic member of Congress.

24 Make no mistake, I'm not against book clubs. I'm
25 not against book clubs. But why did Ms. Amerling try to

1 downplay her connection to the prosecutor?

2 You heard Agent Hart. You heard him testify. He
3 was an FBI agent investigating the case. And you heard him
4 say that it was important to him to know whether, when he's
5 investigating a crime and he's talking to somebody who says,
6 Hey, a crime was committed, whether that person has any
7 bias.

8 And you heard what she did not tell in her
9 November 2nd, 2021 interview with Agent Hart, where the
10 prosecutors were present that she had a personal
11 relationship with the prosecutor.

12 Why? Why is she trying to hide her personal
13 connection to the prosecutor from the FBI? That's a serious
14 question. And she acknowledged that sometimes the book club
15 members discussed political events of the day. And it's not
16 surprising. I mean, they all had a shared background in
17 that they worked under a democratic Congress.

18 The thing about bias is that sometimes people
19 become blind to it. As the Court said just a moment ago,
20 there could be a bias in somebody that they're not aware of.

21 Ms. Amerling worked for 20 years for one political
22 party in a political arena, Congress, where there are
23 constant fights, political fights. Over time, drop by drop,
24 it builds up. It may be that Ms. Amerling, herself, can no
25 longer see how her long-time career for one political party

1 affects her.

2 But you've got to see it, and that's why I ask you
3 to consider whether any testimony or evidence was affected
4 by politics. Why is it important? Fairness and neutrality.

5 Let me give you an example. God forbid a family
6 member dies and you have to figure out somebody who's going
7 to help settle the estate. You decide, all right, let's get
8 a neutral mediator to look at this and we'll decide how to
9 split things up, whatever it is, and see who gets what
10 fairly and neutrally. And it goes on for months and months
11 and months, and everybody involved, or almost everybody,
12 thinks that it's a fair process.

13 Then you learn that one of the people who stands
14 to gain under that estate and the person you thought was the
15 neutral mediator had known each other for 15 years and were
16 in the book club together. That's going to cause you to
17 have a real doubt about the fairness and the neutrality.
18 That would make you question whether they're impartial, and
19 that's a reasonable doubt.

20 If this issue involving the relationship between
21 the prosecutor, as it should, gives you pause, gives you a
22 doubt, you must give Steve Bannon the benefit of the doubt.

23 There are no second chances when we're dealing
24 with a criminal case. There are no second chances. If you
25 have a doubt a year from now, one year from now, and you say

1 to yourself, Wait a minute, I sat on a jury that voted to
2 convict a defendant in a criminal case where the chief
3 witness and the prosecutor had known each other for 15
4 years, you might have a doubt. A year from now will be too
5 late. You've got to consider the doubts it could have
6 today. And if you've got a doubt in your mind, you have to
7 give Steve Bannon the benefit of that doubt.

8 What's another thing about Ms. Amerling's
9 testimony that raises questions, serious questions? Why did
10 she play down her political affiliations when she spoke to
11 the FBI? Why did she play them down? She was asked in her
12 November 2nd, 2020 -- I'm sorry, 2021 interview about the
13 Committee. And she said that she was non-partisan. That's
14 what she told the FBI.

15 Here's the question: "Now, when you were
16 interviewed by the FBI on November 2nd, 2021, you told the
17 FBI agent that you and other members of the staff were
18 non-partisan, didn't you?

19 "Answer: That's correct."

20 That's what she said, non-partisan. What does
21 non-partisan mean? Well, it means free from party
22 affiliation. Why would she downplay her party affiliation?
23 Wait a minute. She's worked for 20 years for only one
24 political party. She's contributed her own money to
25 political candidates of one party. That's the definition of

1 being affiliated with a party. That's not non-partisan.

2 Did Steve Bannon commit a crime? He didn't
3 intentionally refuse to comply with the subpoena.
4 Absolutely not. He didn't refuse to comply with anything.
5 He clearly and repeatedly, through his lawyer, Bob Costello,
6 said, Let's remove the obstacle to my coming and testifying.
7 Let's get rid of the obstacle of executive privilege and
8 I'll testify as I've done on several occasions before
9 Congress.

10 Let me show you just one example of a letter.
11 This is a letter -- and it's Government's Exhibit 6, from --
12 it's to the Chairman of the Committee, Mr. Thompson. The
13 date is 13th of October, 2021, the day before the government
14 says Mr. Bannon committed a crime.

15 Then look at this paragraph that's highlighted.
16 This is Government's Exhibit 6. It said, "Mr. Bannon has
17 testified on three prior occasions before the Mueller
18 Investigation, the House Intelligence Committee and the
19 Senate Intelligence Committee. In each of those instances,
20 when President Trump waived his invocation of the executive
21 privileges, Mr. Bannon testified."

22 What does Mr. Costello suggest? Two different
23 tracks. Either -- you can read this letter when you get
24 back in the jury box. And this is, again, Government's
25 Exhibit 6.

1 It offers two solutions: Number one, talk to
2 President Trump and get him to waive executive privilege as
3 he's done before, and I've testified before when he's done
4 so, or take it to a judge and have it resolved in a civil
5 context and I'll comply.

6 That's what Steve Bannon said. Is that a refusal?
7 Is that contemptuous? Of course not. It's saying, Remove
8 an obstacle and I'll testify.

9 The dates in the subpoena were placeholders,
10 essentially. You heard that, in these instances where a
11 subpoena is sent to a recipient and dates are provided for
12 documents or testimony, there's a lot of negotiation that
13 follows; and that often the person testifies long after the
14 dates in the subpoena. In other words, there's no magic to
15 those dates.

16 And you know when I asked Ms. Amerling again and
17 again, Why those dates? Why those dates? All she could say
18 was -- well, she didn't know really. She really didn't know
19 or who picked the dates. The fact of the matter is the
20 dates on the subpoena are still on the subpoena. They're
21 still under negotiation.

22 Now, you're going to have in the jury room the
23 instructions and you've heard the Judge instruct you on the
24 law. You'll see that, when the instruction talks about the
25 elements of the offense, it says, this is not a defense,

1 this is not a defense, et cetera, et cetera.

2 Just to be clear, we didn't put on a defense in
3 this case. It's the government's burden of proof. So we're
4 not putting any letter or anything on as a defense in the
5 case. So that language about this defense doesn't apply,
6 et cetera, et cetera, we've been here for a week and we
7 heard two witnesses. We didn't feel a need to put on a
8 defense.

9 But the letters, the recent letters from President
10 Trump to Bob Costello for the Committee, saying, Look,
11 President Trump has agreed to withdraw executive privilege.
12 Let's talk about when we can have him testify.

13 You'll see that there is this response back. This
14 is Defense Exhibit 32. We were the ones who had to bring
15 this to your attention, not the government.

16 But on July 14th, not long ago, for certain, Bob
17 Costello writes to the Chairman -- I'm sorry, the Chairman
18 writes to Bob Costello responding to a letter that he sent
19 on January 9th. And he says, essentially, Great. Now
20 you're willing to comply. I understand that executive
21 privilege has been waived. And what does he say? Give us
22 the documents, and then we'll schedule the deposition.

23 What did it say right here, this sentence? "We
24 anticipate that the deposition will occur in the near
25 future." What does that tell you? This is the very same

1 subpoena that we're talking about. The very same subpoena
2 that we're talking about is still under negotiation.

3 The prosecutor says these letters don't matter
4 because Steve Bannon should have come back, should have come
5 in to testify even though we charged him with a crime.

6 The prosecutor in questioning yesterday said, Hey,
7 wait a minute. Didn't Mr. Bannon try to dismiss the charges
8 against him? Well, of course, when a criminal case is
9 pending against you, you've got to deal with that case.
10 You've got to deal with that case.

11 And, of course, Mr. Bannon was not in a position
12 to testify. He could not have testified until he received
13 and learned that President Trump had agreed --

14 **MS. GASTON:** Objection, Your Honor.

15 **THE COURT:** Overruled.

16 **MR. CORCORAN:** And this is Defendant's Exhibit 30.

17 Again, it was the defense who showed you these
18 letters and introduced these letters, but this is a July 9th
19 letter from President Donald J. Trump to Steve Bannon. It
20 says, "I write about the subpoena that you received."

21 He says, "When you first received the subpoena to
22 testify and provide documents, I invoked executive
23 privilege."

24 And he says, "Therefore, if you reach an agreement
25 on a time and a place of your testimony, I will waive

1 executive privilege for you, which allows you to go in and
2 testify truthfully and fairly."

3 The prosecutor says, Why didn't he come in in
4 October, November, December, et cetera, et cetera? Well,
5 this letter removed the obstacle in July. And it's an
6 important question to consider.

7 Look, you're being asked to find somebody guilty
8 of a crime. You are being asked to find somebody guilty of
9 a crime of contempt of Congress with respect to a subpoena,
10 when his testimony on that subpoena may occur in the near
11 future. That's not me saying it. It's Chairman Thompson.

12 Again, Defendant's Exhibit 32, which is a letter
13 to Bob Costello from Chairman Thompson. What does it say?
14 Right here. "We anticipate that the deposition will occur
15 in the near future."

16 "We anticipate that the deposition will occur in
17 the near future." The prosecutors are asking you to find
18 Mr. Bannon guilty of a crime when he may testify in the near
19 future on the subpoena that they're trying to say that he
20 committed a crime on.

21 Look, the prosecutors are basically saying, You've
22 got no choice. But you do have a choice. Our system gives
23 you the power to decide the evidence, not the prosecutors.
24 And they can't order you to do anything.

25 How can you find that Steve Bannon intentionally

1 and willfully committed a crime when he acted honestly to
2 protect his privilege.

3 Think about this example. Some time ago, you
4 received in the mail a letter asking you to come to court
5 for your jury service. Imagine --

6 **MS. GASTON:** Objection, Your Honor.

7 **THE COURT:** Overruled.

8 **MR. CORCORAN:** Imagine, when you received the
9 letter, you realized you couldn't appear in court on that
10 date. Just impossible. Got a lawyer. The lawyer presented
11 your objection. Perhaps the lawyer just asked for an
12 additional week. What was your intent at that date? What
13 was your intent? Because that's what's really being asked
14 of you, What was Steve Bannon's intent?

15 In your mind, you're not refusing to comply.

16 **MS. GASTON:** Objection, Your Honor.

17 **THE COURT:** Ms. Gaston, you presented a
18 hypothetical about a parking ticket. He's presenting a
19 hypothetical about a summons.

20 **MS. GASTON:** Sidebar, Your Honor.

21 **THE COURT:** Sure.

22 (Sidebar discussion.)

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[REDACTED]

(Sidebar discussion concluded.)

MR. CORCORAN: Thank you, Your Honor.

So the question is, in that hypothetical situation where the person has received a summons, knows they cannot appear on that date, asks that an objection be raised, what is in the mind of that person? And what's in the mind of the person is they're not committing a crime. They're trying to resolve and remove an obstacle.

Now, you might think to yourself, you know, in hindsight maybe Mr. Bannon should have taken a different path. Hindsight's 20/20.

You might think, You know what? I kind of think it was a mistake for him and his lawyer to try to protect

1 his privilege, but --

2 **MS. GASTON:** Objection, Your Honor.

3 **THE COURT:** Sustained.

4 **MR. CORCORAN:** The Court will instruct you about
5 the law on intent, already has, and you'll have that back in
6 the jury room. And what you'll have are the instructions on
7 Page 27. And I want to focus you on one sentence. One
8 sentence from that instruction, which is critical. It says,
9 "To be deliberate or intentional means that the failure to
10 comply was not the result of inadvertence, accident or
11 mistake."

12 If you find that Mr. Bannon made a mistake in the
13 path he chose, he's not guilty. You cannot find him guilty.

14 Most mornings before work I have a cup of coffee
15 and I listen to the radio. A bit old-fashioned. But
16 through the years, I have heard reports from other countries
17 about their elections. The people in power try to take
18 steps to put -- to silence the opposition. When I hear
19 that, I think to myself, Thank God it doesn't happen in this
20 country.

21 Right now the Presidency, the Senate and the
22 Congress are in the hands of one party, the Democrats --

23 **MS. GASTON:** Objection, Your Honor.

24 **THE COURT:** Sustained.

25 **MR. CORCORAN:** That's okay. It's okay to have

1 political views that are different from others. We come to
2 our views, each of us, honestly. Some of the things that
3 control those views we have no control over: Where we're
4 born. When we're born. What family our family is, and what
5 we're exposed to over life. We come to our political views
6 honestly.

7 But no one in this country should face a criminal
8 prosecution --

9 **MS. GASTON:** Objection.

10 **MR. CORCORAN:** -- that's based in any way on
11 politics.

12 **THE COURT:** Sustained.

13 **MR. CORCORAN:** That's why I asked you at the start
14 of the case to listen carefully to the evidence.

15 Five or ten years from now, you'll look back and
16 you'll know that you upheld an essential principle in our
17 country; prosecution has to be based on unbiased, neutral
18 evidence. Politics can play no role. It's important. We
19 are all in this together.

20 And Steve Bannon is innocent.

21 Thank you, Your Honor.

22 **THE COURT:** Thank you.

23 **MS. VAUGHN:** Your Honor, can we have a 15-minute
24 break?

25 **THE COURT:** Yes, I think that would be useful for

1 various reasons. Why don't we say 10 minutes. Two minutes
2 is pretty quick. It's 11:04. Let's say 11:15.

3 We are in recess.

4 (Recess was taken from 11:04 a.m. to 11:15 a.m.)

5 **THE COURT:** Is the government ready?

6 **MS. VAUGHN:** Yes, Your Honor.

7 (Jury entered the courtroom.)

8 **MS. VAUGHN:** Ladies and gentlemen, the defense
9 wants to make this hard, difficult, confusing. They want
10 you to wonder, What am I missing here? When a subpoena says
11 October 7th, does it really say October 7th?

12 You're not missing anything. This is not
13 difficult. This is not hard. There were two witnesses
14 because it's as simple as it seems.

15 Your eyes aren't deceiving you about what is in
16 black and white on paper. How much clearer could that
17 subpoena have been? "You are hereby commanded under the
18 authority of the U.S. government to tell us what you know
19 about January 6th." How much clearer could the Committee's
20 letters have been? Your excuse is no excuse. You must
21 comply.

22 The defendant didn't fail to comply because he
23 thought there was play in the joints. He chose not to
24 comply. He made a deliberate decision not to comply.
25 Because he didn't want to.

1 How much clearer could he have been than this. On
2 his social media on October 8th, he yelled it from the
3 mountaintop. I don't see anywhere in here where it says, I
4 think the Committee gave me a couple more weeks. I think
5 the Committee is going to give me a pass because of this
6 privilege my friend, former President Donald Trump, has
7 given me. It says he will not comply. That is not a
8 negotiation.

9 So let's talk about what's really going on here.
10 You saw that subpoena and the documents and topics it
11 required the defendant to turn over. You'll be able to look
12 at it again in the deliberation room. How many of those
13 items require the defendant to tell the Select Committee
14 what he might know about former President Trump and
15 January 6th. The former President, he proclaimed right
16 here, that he stood with in refusing to comply with the
17 subpoena.

18 How convenient that the former President tried to
19 give the defendant an excuse for his defiance?

20 The defendant stood with Donald Trump all right.
21 And that choice, the deliberate decision to stand with
22 former President Trump, that is a choice, a deliberate
23 decision to defy the subpoena.

24 This wasn't a negotiation. Robert Costello was
25 doing exactly what the defendant wanted him to do. He told

1 the government, in his effort to get his client off, that
2 he -- that the defendant was engaged the entire time. He
3 knew exactly what was going on.

4 All Mr. Costello was doing was serving his
5 client's wishes. What is a negotiation about hiding behind
6 a privilege that Ms. Amerling explained, in response to
7 Mr. Corcoran's questions, was not available for total
8 defiance and noncompliance? What is a negotiation about
9 that?

10 That is like a child continuing to argue with
11 their parent after they've been told they're grounded. That
12 kid knows they're grounded. They can argue all they want.
13 It doesn't change the fact that the decision has been made.

14 The Committee, the government, made the decision
15 here. We need to know what you know. We're time limited.
16 This is urgent. We only have a few months. What you're
17 claiming as an excuse is not. Now you need to comply.

18 The defendant didn't comply not because he was
19 mistaken. Not because he thought the dates might be
20 continued. He chose to comply -- he chose not to comply
21 because he didn't want to.

22 And let me say one more thing on Mr. Costello.
23 You heard from Special Agent Hart that he came in on his own
24 to try to convince the government that there was no crime
25 here. But he didn't mention anything when he was doing that

1 that this was a mistake? Wouldn't he have said all the
2 facts he could to convince the government that there was no
3 crime?

4 You heard Special Agent Hart. All Mr. Costello
5 kept saying was he had the same privilege that the Committee
6 had already rejected. He didn't say they thought the dates
7 were malleable. He didn't say that the defendant made a
8 mistake. It's because he didn't. This is a last-minute
9 excuse. Another excuse.

10 And let me comment for a minute on this claim of
11 privilege, Mr. Corcoran's comment that he just made a
12 mistake on the path he chose in relying on this privilege.
13 Judge Nichols just instructed you earlier this morning that
14 the defendant's belief that executive privilege excused him
15 does not provide a defense to his deliberate choice.

16 But you know what it does tell you? It tells you
17 he made a choice. He made a choice to hide behind a
18 privilege claim, even after he was told it didn't excuse
19 him. That letter from just a few days ago that the
20 defendant showed you where he says, Just kidding. Now the
21 former President said he's going to waive, and I'm going to
22 comply. That shows you his choice. He's continuing to make
23 the choice, the deliberate decision that he first made in
24 October of 2021. This is not a mistake. It's a choice.
25 It's contempt and it's a crime.

1 The defendant thinks that he didn't -- his choice
2 can't be deliberate because the Committee didn't take him up
3 on the options he provided them. I think Mr. Corcoran
4 referred to it as the Committee -- all he wanted was the
5 Committee to remove an obstacle for him; that the Committee
6 had some obligation to go to a court or go to former
7 President Trump himself and get their permission to exercise
8 their own authority to get to the bottom of January 6th.

9 That's like saying that the referee on a soccer
10 field can't make calls on plays unless they go over to the
11 baseball diamond next door and get the umpire's opinion
12 first.

13 You heard Ms. Amerling. The courts are a
14 completely different part of our government. And you heard
15 her, the Committee doesn't answer to former President Trump.

16 By making this argument to you, the defendant just
17 confirms his contempt. He is still trying to dictate to the
18 Committee the terms of his compliance. He thinks his
19 authority as one man is greater than our government's, the
20 one which we have all consented to.

21 That's not the way this works. He doesn't get to
22 tell the Committee that it's beneath his compliance; and
23 they need to appeal to a different power or person. That's
24 the definition of contempt.

25 He doesn't get to tell the Committee that they

1 need to wait nine months or more for information that
2 Ms. Amerling told you was essential for them finding new
3 information, new witnesses, new leads. They're
4 time-limited. Instead of 14 months, now at most, because he
5 still hasn't complied, they have 5. That was not the
6 defendant's choice to make, but he made it deliberately. He
7 committed contempt.

8 And the defendant claims that his sudden offer to
9 comply a week or so ago somehow is evidence that he hasn't
10 been unlawfully brushing off the Committee for nine months.

11 But again, as Judge Nichols instructed you earlier
12 this morning, later attempts to comply, the Committee
13 refusing to give up on trying to get to the bottom of this,
14 they don't erase the defendant's earlier crimes.

15 He willfully, deliberately failed to comply in
16 October 2021. He can't change that by claiming he's willing
17 to give the Committee what it was entitled to nine months
18 ago now, which, by the way, he still hasn't done.

19 And, ladies and gentlemen, when it comes to the
20 defendant's sudden effort to comply, you know what's really
21 going on there. A few days before his criminal trial, after
22 refusing to comply for months, after he couldn't convince
23 the government that he hadn't committed a crime, after being
24 charged with federal crimes, after he couldn't get the
25 charges tossed, and even after the lawsuit he claimed was so

1 essential to his response, even after that was resolved in
2 favor of the Committee, of its right to get the information,
3 after all that, he and his friend, former President Trump,
4 suddenly decide he's going to comply? Give me a break.

5 The only purpose of those letters was so that the
6 defendant could come in here and use it to try to convince
7 you that a deadline is not a deadline. Don't be fooled by
8 that. He thinks he can convince you it's no harm no foul.
9 That's not what the evidence in this case shows.

10 That sudden decision to comply is nothing but a
11 ploy. And it's not even a good one because the defendant
12 forgot to tell the Committee he would provide them
13 documents. To this day, he hasn't said he would.

14 And by the way, when you go back into that
15 deliberation room, compare the name-calling and rants in the
16 letter from former President Trump sent to the defendant a
17 few days ago to the serious career investigator Ms. Amerling
18 who testified in this trial. That will tell you all you
19 need to know about how seriously you should take the
20 defendant's sudden change of heart.

21 That letter, which they provided to you, they put
22 it into evidence, tells you everything you need to know
23 about the defendant and the former President's contempt for
24 the work of the Committee.

25 The defendant willfully defied the subpoena when

1 he didn't provide documents on October 7th. He willfully
2 defied the subpoena when he didn't come to his deposition on
3 October 14th. His haphazard attempt to get out of his
4 contempt by pretending to comply now is a waste of
5 everyone's time.

6 You know that, by October 7th, the defendant
7 didn't intend to comply. Mr. Corcoran spent a lot of time
8 talking about, There's all these people that have worked
9 with the Committee and none of them have been charged.
10 Right.

11 Ms. Amerling told you, if there's a real problem
12 with the date, people call the Committee and they work it
13 out. The Committee hadn't heard a word from him on
14 October 7th. And you know that wasn't a mistake because the
15 letter that night his attorney sent made that clear. It
16 said, We're not complying. His attorney admitted to the
17 government, we haven't even gathered a single document.

18 They were claiming a privilege over something they
19 didn't even know whether they had because they didn't care
20 to look, because he didn't care to comply. He was in
21 contempt at 10 a.m. on October 7th. And he certainly was in
22 contempt at 10 a.m. on October 14th. He got that letter
23 from the Committee on October 8th saying, You better come or
24 else. We're rejecting your excuse. And he didn't.

25 These are the hard facts. These are the hard

1 facts in black and white in this case on paper. You don't
2 even need Ms. Amerling's testimony or Special Agent Hart's
3 testimony to know that.

4 The defendant keeps trying to distract you from
5 it, distract you from what's in black and white. He wants
6 to talk about electronic signatures versus handwritten
7 signatures. They want to talk about that because they don't
8 want to talk about the clear dates in the subpoena. They
9 want to talk about proof of service, which --

10 By the way, let's look at that for a minute.
11 Proof of service, date 9/23/21, Ms. Amerling's email sending
12 the subpoena to Mr. Costello, 9/23/21, and what does
13 Mr. Costello say the next day? "Confirmed with my client.
14 Got it."

15 What are we talking about here? They want to talk
16 about proof of service because they don't want to talk about
17 the Committee making it clear that the defendant's excuse
18 had been rejected. They want to talk about what human
19 picked the date on the subpoena. What human? This is a
20 committee. It's a body.

21 Ms. Amerling testified they worked collaboratively
22 together. By the way, across party lines. We all live in
23 the modern world. Organizations act as a body. Why are we
24 talking about which person suggested the date first? The
25 date was the date. It's on the subpoena. It was

1 authorized. It went out. It was delivered.

2 They just want to keep talking about what human
3 was in the room because they don't want to talk about how
4 clear the defendant's refusals were. They want to talk
5 about book club. I don't know what courtroom Mr. Corcoran
6 was in, but all I learned from that testimony was that
7 Ms. Amerling and Ms. Gaston are book club dropouts and that
8 they have no personal relationship.

9 Why are we talking about a book club? We're
10 talking about a book club because the defendant doesn't want
11 to talk about the fact that he was happy to proclaim in
12 public that he had no regard for the Committee and he did
13 not intend to comply.

14 And politics, why are we talking about politics?
15 What is political about a violent attack on the seat of our
16 government? What is political about trying to understand
17 why that happened and how we stop it from happening again?

18 The only person injecting politics into this case
19 is seated over there. It's the defendant. And the only
20 reason they want to talk about politics is because they want
21 to distract you from the fact that the defendant is
22 undermining our system of government by refusing to
23 recognize its authority. The only reason they want to talk
24 about any of these things is because they don't want to talk
25 about his contempt.

1 Mr. Corcoran said that our system gives you the
2 power as the jury to decide this case and he's right. But I
3 can't help but recognize the irony that he now wants to rely
4 on how our system is supposed to work. That, again, just
5 shows how deliberate the defendant's choice was to ignore it
6 before.

7 Folks, when you come to this courtroom and when
8 you go into your deliberation room, you don't leave your
9 common sense at the door. You know, we all know, from
10 everyday life, that a deadline is a deadline. And it was a
11 deadline here. The Committee told the defendant so many
12 times, defiance is a crime.

13 But he didn't listen because he didn't care. He
14 had contempt for them and the public service they are trying
15 to perform. He had contempt for the people's effort to find
16 out the who, the what and the why of the day when our
17 government was attacked. When the foundational processes of
18 our democracy to transfer power from one to another was
19 attacked.

20 The defendant is not above the law. He is not the
21 decider of the law. He is guilty.

22 **THE COURT:** Ladies and gentlemen of the jury, you
23 have now heard the closings. I have really just a few last
24 remarks for you. One is an instruction I want to give you
25 about the closings that you just heard.

1 This will be Instruction 27, Statements and
2 Closing. Ladies and gentlemen, during closings, I sustained
3 objections to certain statements by counsel. You should not
4 consider those statements.

5 You also heard about a purported rules violation
6 by the Committee in not providing the defendant with a copy
7 of certain rules and about certain inconsistencies and
8 signatures. You may not consider these issues as a defense
9 in this case. Instead, you should comply with my prior
10 instructions regarding the elements that must be proven here
11 beyond a reasonable doubt.

12 The last thing I have to do before you begin your
13 deliberations is to excuse the alternate juror. As I told
14 you before, the selection of alternates was an entirely
15 random process. It's nothing personal. We selected two
16 seats to be the alternate seats before any of you entered
17 the courtroom.

18 We have already, as everyone knows, excused one
19 juror for health reasons. Since the rest of you have
20 remained healthy and attentive, I can now excuse the juror
21 in seat 12.

22 Juror in seat 12, before you leave, I'm going to
23 ask you to tear out a page from your notebook and to write
24 down your name and daytime phone number and hand this to
25 Ms. Lesley. I do this because it is possible, though

1 unlikely, that we will need to summon you back to rejoin the
2 jury in case something happens to one of the other 12
3 jurors. Since that possibility exists, I'm also going to
4 instruct you not to discuss the case with anyone until we
5 call you.

6 My earlier instructions regarding use of the
7 internet, reading about the case and the like still applies.
8 Don't research this case or communicate about it on the
9 internet.

10 In all likelihood, we will be calling you to tell
11 you there is a verdict and you are now free to discuss the
12 case. There is, however, the small chance that we will need
13 to bring you back on to the jury.

14 Thank you very much for your service. And please
15 report back to the jury office, after you provide Ms. Lesley
16 with this information, to turn in your badge on the way out.

17 With that, ladies and gentlemen of the jury, you
18 are free to return to your deliberation room, really the
19 courtroom. We will finalize the written jury instructions
20 and bring copies by. We will also be bringing the admitted
21 exhibits by, together with the verdict form.

22 I want to thank you again, as I likely will later,
23 but certainly thank you again for your time this week and
24 your service in this very important duty.

25 With that, we are adjourned.

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DEPUTY CLERK: All rise.

(Jury exited the courtroom at 11:38 a.m.)

(Recess.)

(Jury entered the courtroom at 2:47 p.m.)

THE COURT: So, good afternoon, everyone.

Just a little bit ago I received a note from the jury dated today's date, July 22nd, 2022, at 2:15. And the note signed by the foreperson says, "We have reached a verdict on both counts."

Ms. Lesley, as a result, could you please take the verdict?

DEPUTY CLERK: (Complied.)

THE COURT: Will the foreperson of the jury please rise.

DEPUTY CLERK: Has the jury agreed upon a verdict?

THE FOREPERSON: We have.

DEPUTY CLERK: Count 1, Contempt of Congress, willful failure to appear for testimony. As to Count 1, how do you unanimously find the defendant?

THE FOREPERSON: We find the defendant guilty.

DEPUTY CLERK: Count 2, Contempt of Congress, willful failure to provide records. As to Count 2, how do you unanimously find the defendant?

THE FOREPERSON: We find the defendant guilty.

DEPUTY CLERK: Thank you.

1 **THE COURT:** Members of the jury, is the verdict
2 just announced the verdict of each and every jury?

3 **JURORS:** Yes.

4 **THE COURT:** Thank you, Ms. Lesley.

5 Ladies and gentlemen of the jury, I want to thank
6 you for your service.

7 As I think you know from my instructions, from how
8 I attempted at least to conduct this trial and from other
9 things that were said during the trial, jury service is
10 critically important. You invested an entire week in this,
11 and I think you did so both seriously and recognizing the
12 important role that you all played.

13 I very much appreciate your service. I know we
14 all do, and we thank you for it. And you are now
15 discharged.

16 Thank you.

17 **MS. VAUGHN:** Your Honor, can we go on the line
18 just one second?

19 (Sidebar discussion.)

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

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(Sidebar discussion concluded.)

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THE COURT: All right. So we obviously need to talk, at a minimum, about a sentencing schedule. Is the government asking for anything in between now and sentencing?

10

MS. VAUGHN: No, Your Honor.

11

THE COURT: Okay.

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It is my practice in all cases to have a presentence investigation report prepared. The current practice right now or the current timeline for that is -- for various reasons, including COVID and January 6th cases and the like is that takes approximately 90 days, which would have us sometime in the late October timeframe.

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Now I'm simply looking at my calendar. So I would like to do the sentencing in this matter, if available to the parties, on October 21st, at 3 p.m.

21

22

MS. VAUGHN: That's fine for the government, Your Honor.

23

MR. CORCORAN: That works for us, Your Honor.

24

25

THE COURT: Okay. So obviously there will be a presentence investigation report prepared. You obviously

1 know how those things work.

2 What I would ask is, Mr. Corcoran, that the
3 parties submit sentencing memoranda no later than
4 October 14, 2022 at the close of business that day.

5 And for the purpose of facilitating that I would
6 ask that Mr. Bannon, with counsel, report to the Probation
7 Office today before leaving, if possible.

8 So, again, 3 p.m., October 21st. I think in this
9 courtroom.

10 Anything from the government's perspective we
11 should address otherwise?

12 **MS. VAUGHN:** No, Your Honor.

13 **THE COURT:** Mr. Corcoran? Mr. Schoen?

14 **MR. CORCORAN:** No, Your Honor.

15 **THE COURT:** Okay. Thank you all. Thank you all
16 for your professionalism this week. And we will see you all
17 in October.

18 (Proceedings adjourned at 2:54 p.m.)

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C E R T I F I C A T E

I, **Lorraine T. Herman, Official Court Reporter,**
certify that the foregoing is a true and correct transcript
of the record of proceedings in the above-entitled matter.

July 22, 2022
DATE

/s/
Lorraine T. Herman

<p>DEPUTY CLERK: [6] 1019/2 1100/1 1100/12 1100/17 1100/21 1100/25 JURORS: [4] 1024/6 1041/25 1057/19 1101/3 MR. CORCORAN: [31] 1020/6 1020/11 1022/3 1022/14 1057/15 1057/17 1057/20 1059/20 1060/2 1060/7 1060/9 1060/21 1060/24 1061/2 1061/9 1061/23 1062/12 1064/3 1065/6 1079/16 1081/8 1083/23 1084/11 1084/14 1085/4 1085/25 1086/10 1086/13 1101/25 1102/23 1103/14 MR. SCHOEN: [5] 1019/11 1019/16 1021/25 1022/24 1023/5 MS. GASTON: [26] 1041/24 1042/1 1059/18 1059/24 1060/6 1060/11 1060/15 1061/13 1063/16 1063/20 1079/14 1081/6 1081/16 1081/20 1081/23 1082/5 1082/9 1082/13 1082/16 1083/4 1083/9 1083/13 1083/18 1085/2 1085/23 1086/9 MS. VAUGHN: [22] 1019/7 1020/16 1020/19 1021/3 1021/10 1021/14 1021/16 1021/19 1021/24 1022/11 1022/17 1023/9 1023/16 1023/22 1086/23 1087/6 1087/8 1101/17 1101/20 1102/10 1102/21 1103/12 THE COURT: [69] 1019/15 1019/17</p>	<p>1020/8 1020/12 1020/18 1020/23 1021/9 1021/12 1021/15 1021/18 1021/22 1022/1 1022/10 1022/18 1023/4 1023/6 1023/11 1023/18 1024/1 1024/5 1024/7 1057/14 1057/16 1059/19 1059/25 1060/8 1060/13 1060/19 1060/23 1061/1 1061/5 1061/17 1062/5 1063/17 1063/19 1063/22 1065/1 1079/15 1081/7 1081/17 1081/21 1081/25 1082/7 1082/11 1082/14 1082/18 1083/7 1083/11 1083/15 1083/22 1084/3 1084/12 1085/3 1085/24 1086/12 1086/22 1086/25 1087/5 1097/22 1100/5 1100/13 1101/4 1101/22 1102/3 1102/6 1102/11 1102/24 1103/13 1103/15 THE FOREPERSON: [3] 1100/16 1100/20 1100/24</p>	<p>11:04 [2] 1087/2 1087/4 11:15 [1] 1087/2 11:15 a.m [1] 1087/4 11:38 a.m [1] 1100/2 12 [4] 1031/3 1098/21 1098/22 1099/2 13 [1] 1033/6 13th [4] 1046/19 1049/15 1049/21 1076/13 14 [4] 1023/24 1033/14 1092/4 1103/4 14th [16] 1038/14 1039/5 1044/17 1047/18 1048/4 1048/8 1048/13 1051/7 1055/15 1067/11 1071/5 1071/9 1071/13 1078/16 1094/3 1094/22 15 [5] 1033/20 1072/11 1072/17 1074/15 1075/3 15-minute [1] 1086/23 15th [1] 1048/9 16 [1] 1034/3 17 [3] 1034/8 1052/3 1070/16 1793 [1] 1017/13 18 [2] 1034/19 1039/7 18th [6] 1023/25 1038/16 1048/23 1048/25 1049/16 1049/21 19 [1] 1035/2 192 [1] 1046/12 194 [1] 1046/12 1:21-670 [1] 1017/3</p>	<p>1038/14 1038/16 1039/5 1039/7 1042/22 1043/22 1044/7 1044/12 1048/13 1048/13 1057/21 1067/21 1071/13 1073/9 1075/12 1075/16 1076/13 1090/24 1092/16 2021-670 [1] 1019/3 2022 [4] 1017/5 1100/7 1103/4 1104/9 21 [3] 1036/17 1095/11 1095/12 21201 [1] 1017/19 21st [2] 1102/20 1103/8 22 [2] 1017/5 1104/9 2225 [1] 1017/20 22nd [1] 1100/7 23 [1] 1037/23 23rd [1] 1044/12 24 [5] 1019/23 1021/14 1022/20 1022/22 1038/12 24th [1] 1044/21 25 [1] 1038/22 25th [1] 1017/19 26 [1] 1041/14 27 [3] 1058/22 1085/7 1098/1 2800 [1] 1017/15 2:15 [1] 1100/7 2:47 p.m [1] 1100/4 2:54 p.m [1] 1103/18 2nd [3] 1073/9 1075/12 1075/16</p>
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